

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs November 28, 2006

**STATE OF TENNESSEE v. SCOTT DOUGLAS GRIFFIN**

**Appeal from the Criminal Court for White County**  
**No. 10333 Lillie Ann Sells, Judge**

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**No. M2005-02817-CCA-R3-CD - Filed January 19, 2007**

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Appellant, Scott Douglas Griffin, pled guilty in the White County Criminal Court to attempt to manufacture a schedule II controlled substance, a Class D felony. The trial court sentenced him to three years as a Range I standard offender, suspended to be served on supervised probation. On March 5, 2003, the trial court found the appellant to be in violation of his probation. The trial court required the appellant to serve thirty-eight days in jail and extended his probationary period to two years from the original expiration date. Subsequently, the appellant was again found to be in violation of his probation whereupon the trial court revoked the appellant's probation and ordered him to serve his sentence in confinement. The appellant appealed this action, alleging that the trial court abused its discretion by revoking his probation. Following our review, we affirm the judgment of the trial court but remand the case for a correction of the judgment to reflect credit for any time served as a result of the initial revocation and the appellant's arrest for the present revocation.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed and Remanded for Correction of Judgment**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which DAVID G. HAYES and ALAN E. GLENN, JJ., joined.

David Brady, District Public Defender; John B. Nisbet, III, Assistant District Public Defender, for the appellant, Scott Douglas Griffin.

Robert E. Cooper, Jr., Attorney General and Reporter; David E. Coenen, Assistant Attorney General; William Gibson, District Attorney General; Beth Willis and William Locke, Assistant District Attorneys General, for the appellee, State of Tennessee.

## OPINION

The record reflects that the appellant was indicted for one count of attempt to manufacture methamphetamine, one count of possession of marijuana and one count of possession of drug paraphernalia. On September 9, 2002, he entered a guilty plea to attempt to manufacture methamphetamine and received a three year sentence to be served on supervised probation. On January 21, 2003, a probation violation warrant issued based upon the appellant testing positive for methamphetamine and failing to comply with house arrest. This violation resulted in the appellant serving thirty-eight days in jail and his probation being extended two years from his original release date.<sup>1</sup>

A subsequent violation warrant issued on April 14, 2005 based upon the appellant's arrest for driving while under the influence of an intoxicant and evading arrest. Deputy Craig Wilson of the White County Sheriff's Department testified at the probation revocation hearing that he was dispatched to the scene of an accident around 10:00 p.m. on April 1, 2005. When he arrived at the scene, he found a car turned on its side that had crashed into a parked car in the driveway of a residence. The driver of the car was not present so Deputy Wilson ran the tags, leading him to the home where the appellant resided with his parents. Deputy Wilson stated that upon arriving at the home, he observed that the appellant had suffered minor injuries, exhibited slurred speech and was generally not very coherent. When asked if he had taken any medication or illegal drugs, the appellant told Deputy Wilson that he had taken medication and provided a list of prescribed medications. A toxicology report revealed certain prescription drugs plus methamphetamine and marijuana in the appellant's system. Deputy Wilson stated that the appellant admitted to driving the car and leaving the scene.

The appellant's mother, Nina Griffin, also testified at the revocation hearing. She testified that the appellant had been with her that evening at a singing. She stated that they arrived home at approximately 9:30 p.m. and the appellant told her he was going out to drive around the block. She described him as seeming fine when he left. She said that her son was picking glass from his hair when Deputy Wilson arrived at her home and believed that his slurred speech and incoherent manner was due to a head injury from the accident. She could not explain why he would refuse medical treatment, and she also could not understand how the toxicology report showed methamphetamine and marijuana in his system.

The trial court concluded that the initial decision to place the appellant on probation "was obviously a mistake." The court found Deputy Wilson to be a credible witness and disagreed with the appellant's mother's assessment that the appellant was not under the influence of any intoxicant when he drove her vehicle. The court noted that the appellant had been revoked previously on the same sentence and had been given the opportunity to comply with probation. It then found by a

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<sup>1</sup> The appellant filed a notice of appeal regarding the initial violation but voluntarily dismissed his appeal in this court. State v. Scott Griffin, No. M2003-00758-CCA-R3-CD (Tenn. Crim. App. at Nashville)(order granting motion to voluntarily dismiss – May 1, 2003).

preponderance of the evidence that the appellant had failed to do so. In making this finding, the court stressed:

I want to make clear for this record that the court finds by a preponderance of the evidence based on the officer's testimony that the defendant left the scene of an accident. He admitted he was driving and left the scene of an accident. Based on the observation of the officer this defendant was incoherent, he appeared to be under the influence...This defendant's probation is violated.

The trial court revoked the appellant's probation and ordered him to serve the original three year sentence in the custody of the Department of Correction.

### ANALYSIS

The appellant contends that the trial court abused its discretion by revoking his probation. Specifically, he contends that the trial court improperly admitted the toxicology report into evidence and that the trial court acted as an investigator on the case when it continued the revocation hearing so that the toxicology report could be completed. He also contends that the trial court acted too harshly in imposing the original sentence and should have extended the probationary period for an additional two years.

A trial court may revoke a sentence of probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of his release. Tenn. Code Ann. § 40-35-311(e). A trial court is not required to find that a violation of probation occurred beyond a reasonable doubt. Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). The evidence need only show that the court has exercised conscientious judgment in making the decision and has not acted arbitrarily. Id. Our standard of review on appeal is whether the trial court abused its discretion in finding that a violation of probation occurred. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). In order to conclude that the trial court abused its discretion, there must be no substantial evidence to support the determination of the trial court. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Such a finding “reflects that the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.” State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)).

With regards to the appellant's assertion that the toxicology report was improperly admitted through Deputy Wilson, this court notes that the trial court specifically stated that it was “not considering the report by the lab” and based its decision on Deputy Wilson's observations of the appellant. Additionally, we note that the appellant admitted to Deputy Wilson that he was the driver of the vehicle and left the scene of the accident. Furthermore, the appellant's mother testified that he was driving the vehicle and left the scene. Regardless of whether or not the toxicology report was properly admitted, there is ample evidence in the record to support a revocation of probation. Appellant's contention that the trial court should have extended his probationary period for an

additional two years rather than imposing the original sentence is equally without merit. The appellant's probation had been revoked previously resulting in his probationary period being extended two years. He was given the opportunity to comply with the conditions of probation once before but failed to do so. The trial court did not abuse its discretion in revoking the appellant's probation and ordering him to serve the three year sentence in confinement as originally entered.

#### CONCLUSION

Based upon the record and the parties' briefs, the judgment of the trial court is affirmed. However, we remand the case to the trial court for correction of the judgment to reflect credit for any time served on the previous revocation and on this revocation.

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D. KELLY THOMAS, JR., JUDGE